(18,896.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 262.

THE STATE OF OHIO ON THE RELATION OF JOHN LLOYD, PLAINTIFF IN ERROR,

vs.

JOSEPH B. DOLLISON, SHERIFF OF GUERNSEY COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Return to writ of error	1	1
Petition for writ of error	2	1
Assignment of errors	3	2
Writ of error	12	7
Citation and service	13	7
Bond on writ of error	14	8
Certified copy of docket and journal entries	16	9
Order advancing cause	16	9
Judgment	16	10
Certificate of Federal question	17	10
Clerk's certificate	18	11
Petition in error and waiver of service	20	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 25, 1903.

	Original.	Print
Transcript from circuit court of Guernsey county, Ohio	22	13
Transcript of appearance docket entries	22	13
Petition for *habeas corpus*	24	14
Exhibit A—Mittimus	27	16
Affidavit	28	16
State warrant	31	18
Return of mittimus	34	20
Return and answer of sheriff	34	20
Special demurrer	35	21
Writ of *habeas corpus*	36	21
Sheriff's return	36	22
Order remanding petitioner	37	22
Order that writ of *habeas corpus* issue	37	22
Order remanding petitioner	37	23

1 In the Supreme Court of Ohio.

THE STATE OF OHIO, } ss:
City of Columbus, }

To the honorable the Supreme Court of the United States:

Pursuant to the command of your within writ of error, directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named in a certain authenticated transcript to this writ attached, send, as within we are commanded.

Seal the Supreme Court of the State of Ohio.

In witness whereof, I, Lawson E. Emerson, clerk of the supreme court of Ohio, have set my hand and seal of said court, this 10th day of April, A. D., 1903.

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio.

2 Supreme Court of Ohio.

STATE OF OHIO on the Relation of JOHN LLOYD, Plaintiff in Error,
v.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio, Defendant in Error. } No. 8109.

Petition for Writ of Error.

Considering himself aggrieved by the final decision of the supreme court of the State of Ohio, in rendering judgment against him the said relator, and plaintiff in the above entitled case, the said relator hereby prays a writ of error from the said decision and judgment to the Supreme Court of the United States.

Said assignment of errors are hereto attached and herewith filed.

ROBERT M. NEVIN,
F. S. MONNETT,
D. F. PUGH,
Attorneys for Plaintiff in Error.

STATE OF OHIO, } ss:
Supreme Court, }

Let the writ of error issue upon the execution of a bond by John Lloyd the relator, to the State of Ohio, in the sum of $1000.00; said bond when approved to act as a superdedeas. Dated this 31st day of March 1903.

JACOB F. BURKET,
Chief Justice of the Supreme Court of the State of Ohio.

3 Supreme Court of Ohio.

STATE OF OHIO on the Relation of JOHN LLOYD, Plaintiff in Error,
v.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio, Defendant in Error.
No. 8109.

Assignment of Errors.

Now comes the above plaintiff in error and files herewith his petition for writ of error, and says that there are errors in the record of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignment:

The supreme court of the State of Ohio erred in holding and deciding that an act of the General Assembly of the State of Ohio, passed April 3d, 1902, entitled An act "to amend section 4364–20 of the Revised Statutes of Ohio, and to supplement said section by enacting supplementary sections 4364–20*a*, 4364–20*b*, 4364–20*c*, 4364–20*d*, 4364–20*e*, 4364–20*f*, 4364–20*g*, 4364–20*h*, and 4364–20*i*," (95 O. L. 87–91) was valid—

The validity of said act was denied and drawn in question by the plaintiff in error, on the ground of it being repugnant to the Constitution of the United States and in contravention thereof.

The said errors are more particularly set forth as follows:

The supreme court of the State of Ohio erred in holding and deciding—

First. That said act of April 3d, 1902, did not abridge the privileges and immunities of citizens of the State of Ohio, or of this relator, John Lloyd, as guaranteed by the fourteenth amendment of the Federal Constitution.

4 Second. That said act did not deny to the citizens or to the relator, John Lloyd, within the jurisdiction of the United States and of the State of Ohio, the equal protection of the laws, as guaranteed by the fourteenth amendment of the Federal Constitution.

Third. That said act did not deprive the citizens or said relator, John Lloyd, of his liberty or property without due process of law, as guaranteed by the fourteenth amendment of the Federal Constitution.

Fourth. That the said accused, John Lloyd, did enjoy the right to a speedy and public trial by an impartial jury of the State, and district wherein the alleged crime had been committed, and that the said jury district had been previously ascertained by law, and that the said accused had been duly informed of the nature and cause of the accusation against him, and that the said relator, John Lloyd, was protected and secure in his person, house, papers and effects against unreasonable seizure, as guaranteed by article 4, and

article 6 of the amendments of the Constitution of the United States.

Fifth. That said act as applied to this relator, John Lloyd, did not impair the obligation of contracts, contrary to the provisions of the Federation Constitution, article I, section 10.

Sixth. In finding that said relator, John Lloyd, was guilty of violating said act by selling and furnishing intoxicating liquors to one E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer, to be used as a beverage.

And in finding the said relator, John Lloyd, guilty under said act of keeping a place where intoxicating liquors are kept for sale, given away and sold for beverage purposes, and in violation of said act.

By the provisions of section I of said act any other citizen of the city of Cambridge, county of Guernsey, could give away,
5 said quantity of beer, for such purposes, and could then and there, keep a place where such beer could be given away for beverage purposes in such citizen's private dwelling.

The exact language of the closing paragraph of one of the subdivisions of said section is in words as follows:

"The words 'giving away' where they occur in this act shall not apply to the giving away of intoxicating liquors by a person in his private dwelling, unless such private dwelling is a place of public resort."

That by said exception to said act this relator, John Lloyd, was not afforded the equal protection of the laws, or the same protection of the laws, as was extended then and there, to such owners of their private dwellings in the said city of Cambridge, Ohio.

Seventh. In finding that said relator, John Lloyd, was guilty of violating said act by selling and furnishing intoxicating liquors to one E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer to be used as a beverage, and in finding the said relator, John Lloyd, guilty under said act of keeping a place where intoxicating liquors are kept for sale, given away or sold for beverage purposes, in violation of said act, whereas, by the provisions of said section I of said act, a special exemption was given then and there to manufacturers of intoxicating liquors from the raw material, so that such manufacturers could then and there, sell, deliver, furnish and give away said quantity of beer to *bona fide* retail dealers trafficking in intoxicating liquors and could sell, deliver, furnish or give away said quantity of beer to any party or parties residing outside of the limits of said city of Cambridge, wholly without offending against said act or violating the criminal provisions thereof.

6 Eighth. In finding that said relator, John Lloyd, was guilty of violating said act, by selling and furnishing intoxicating liquor, to one E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer, and in finding the said relator, John Lloyd, guilty under said act of keeping a place where intoxicating liquors are kept for sale, given away or sold for bever-

age purposes, in violation of said act, whereas, by the terms of said act, all the citizens of said county of Guernsey, residing outside of the city of Cambridge in said county, being 49/50 of said territory of said county, were protected by the laws of the State of Ohio against arrest, seizure and imprisonment in doing and performing the same act in the same way and at the same time, to-wit, all such citizens of the said county of Guernsey, and the State of Ohio, then and there residing outside of the municipal boundaries of the municipalities of said State, were afforded the right and privilege to sell, furnish or give away intoxicating liquors to said E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer, or in any other quantity whatsoever, to be used as a beverage, and all of such citizens residing outside of said municipality of Cambridge in said county, could then and there, keep a place where intoxicating liquors are kept for sale, given away, or were kept for sale, given away or sold for beverage purposes without violating said act, and without committing any offense punishable under the penal laws or criminal provisions of said act, wholly in contravention of the last clause of section I, and as guaranteed to this relator, John Lloyd, by the fourteenth amendment of the Federal Constitution.

7 Ninth. In finding that said relator, John Lloyd, was guilty of violating said act by selling and furnishing intoxicating liquor to one E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer, and in finding the said relator, John Lloyd, guilty under said act of keeping a place where intoxicating liquors are kept for sale, given away or sold for beverage purposes in violation of said act, whereas, by the terms of said act, all the citizens of said county of Guernsey, residing in the villages and cities of said county of Guernsey, and all the citizens in the municipalities of the remaining portion of said State of Ohio, where a vote upon the question of the sale of intoxicating liquor, as provided by said act had not been taken, or, if said vote had been taken under the provisions of said act and failed to carry by a majority of the electors thereof, under the provisions of said act, then each and all of said citizens were then and there protected by the laws of the State of Ohio against arrest, seizure and imprisonment, in doing and performing the same act in the same way, at the same time that the said accused sold said quantity of beer as set forth herein to be used as a beverage, and all of such citizens, as above described, were afforded the right and privilege to then and there sell, furnish or give away intoxicating liquors to said E. L. Scott, in such municipalities and villages in the quantity of six pints of beer, or in any other quantity whatsoever, to be used as a beverage, and all of such citizens, residing in such municipalities, could at the time the said accused and relator was under arrest, and at the time he was arrested, and did at will, keep a place where intoxicating liquors are kept for sale, given away or sold for beverage purposes, without violating said act, and without committing any offense punis-able under the penal or criminal provisions of said act, wholly in contravention

of the last clause of section I of the fourteenth amendment, and as guaranteed to this accused by the fourteenth amendment of the Federal Constitution.

8 Tenth. In finding that relator, John Lloyd, was guilty of violating said act, by selling and furnishing intoxicating liquor to one E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer, and in finding the said relator, John Lloyd, guilty under said act of keeping a place where intoxicating liquors are kept for sale, given away or sold for beverage purposes, in violation of said act, whereas, each railway corporation, within the State of Ohio, and within said city of Cambridge, to-wit, the Baltimore and Ohio Railway Company and the Pennsylvania Railway Company, through its servants, agents, conductors and porters, were authorized, then and there, within the limits of said municipal boundaries of the city of Cambridge, as well as throughout the State of Ohio, and all other railroads within the State of Ohio, operating and controlling, not to exceed two hundred miles of railway within this State, by the payment of three hundred and fifty ($350.00) dollars as an annual tax, or, if operating more than two hundred miles of railway within this State, by the payment of seven hundred ($700.00) dollars as an annual tax, were then and there authorized to maintain and conduct places within the said city of Cambridge, where intoxicating liquors for beverage purposes were sold at retail, and were authorized, permitted and privileged, at the same time and place, to sell, furnish and give away, six pints of beer, or any other quantity whatsoever, to be used as a beverage to said E. L. Scott, or to any other citizen whatsoever, without violating said act, or any of the provisions thereof, and without committing any offense, punishable under the penal or criminal provisions of said act. That all of said privileges, immunities and rights were expressly granted by the same General Assembly, that passed the aforesaid act by supplementing the liquor laws of the State,

9 of Ohio, by extending said privileges and immunities to such railway corporations, in an act passed May 12th, 1902, entitled An act, "to supplement section 4364–9 of the Revised Statutes of Ohio and to provide for a tax upon, and to regulate the business of the sale of intoxicating liquors upon dining and buffet cars upon railroads traversing the State of Ohio."

That by reason of these immunities and privileges granted and extended to said railway corporations, their porters, conductors, servants and employés, and to their passengers, to so buy, sell and give away intoxicating liquors in buffet and dining cars, upon their said trains, within the said municipal boundaries of the city of Cambridge, at the same time and place and in the same way, that was forbidden to this accused and relator, did not and does not afford to the said accused the equal protection of the laws, and did not and does not afford to the other citizens of the city of Cambridge, the equal protection of the laws as guaranteed by the first section of the fourteenth amendment of the Federal Constitution.

Eleventh. In finding that the relator, John Lloyd, was guilty of

violating said act, by selling and furnishing intoxicating liquor to one E. L. Scott, resident of the city of Cambridge, Ohio, in the quantity of six pints of beer, and in finding the said relator, John Lloyd, guilty under said act, of keeping a place where intoxicating liquors are kept for sale, given away or sold for beverage purposes in violation of said act, while all other citizens within the jurisdiction of the State, residing outside of the said city of Cambridge, in said county of Guernsey, are governed by criminal laws, and were then and there governed by criminal laws that have and had a uniform operation throughout the State.

10 And were not deprived of their liberty by an alleged criminal law, or a law regulating crime within certain municipal boundaries and territory of the State, and not operative in the non-municipal districts of the State. And all other citizens of said county of Guernsey, residing outside of the municipal boundaries of said city of Cambridge, are governed, controlled and punished only for the violation of laws that are passed and made to take effect upon the approval of the General Assembly of the State of Ohio, and not made to take effect by the authority of the votes of the electors of the municipal territory of the State, or any section of the State; that so finding said relator guilty under said act so put in force and made effective by the electors of the city of Cambridge, denies to this accused the equal protection of the laws as guaranteed by the fourteenth amendment of the Federal Constitution.

Twelfth. In finding that said relator, John Lloyd, was guilty as set forth in said record, and in being arrested and imprisoned under said act, does not afford the said accused the right to a speedy and public trial by an impartial jury of the State and district wherein the crime as alleged, has been committed, and deprives him of the selection of an impartial jury from a jury district, which had been previously ascertained by law in like manner to all other citizens of the State of Ohio, accused of crime, and wholly in violation of article 6 of the amendments of the Federal Constitution, and contrary to the provisions and guarantees of the *of the* fourteenth amendment of the Federal Constitution.

11 For each and all of said errors, the plaintiff in error, prays that the judgment of the supreme court of Ohio, dated the — day of March, A. D. 1903, be reversed and a judgment rendered for the said plaintiff in error, and for his costs.

R. M. NEVIN,
FRANK S. MONNETT,
D. F. PUGH,
Attorneys for Plaintiff in Error.

12 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of the State of Ohio:

Because, in the records and proceedings, as also the rendition of a judgment in a plea which is in the said supreme court of Ohio, at the March sitting of the January term 1903, thereof, between The State of Ohio on the relation of John Lloyd, plaintiff in error *versus* Joseph B. Dollison, sheriff of Guernsey county, Ohio, defendant in error, a manifest error has happened to the great damage of the said John Lloyd, relator, as by his complaint appears.

We, being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington D. C., and filed in the office of the clerk of the United States Supreme Court on or before thirty days from the date hereof, to the end that the record and proceedings aforesaid, being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws, constitution and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 3rd day of April 1903.

Done in the city of Columbus with the seal of the circuit court of the United States for the southern district of Ohio attached.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk of the Circuit Court of the United States,
By C. P. WHITE, *Deputy.*

Allowed.
JACOB F. BURKET,
Chief Justice of the Supreme Court of the State of Ohio.

13 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Joseph B. Dollison, sheriff of Guernsey county, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Ohio, wherein The State of Ohio on the relation of John Lloyd, is plaintiff in error, and you, the said Joseph B. Dollison, sheriff of Guernsey county, Ohio, are defendant in error, to show cause, if any

there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the chief justice of the supreme court of the State of Ohio, this 31st day of March, 1903.

JACOB F. BURKET,
Chief Justice of the Supreme Court of the State of Ohio.

Attest: LAWSON E. EMERSON,
Clerk of Supreme Court of the State of Ohio.

COLUMBUS, OHIO, *Apr.* 7", 1903.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

W. B. WHEELER,
Attorney for Defendant in Error.

14 Supreme Court of Ohio.

STATE OF OHIO on the Relation of JOHN LLOYD, Plaintiff in Error,
v.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio, Defendant in Error.
} No. 8109.

Bond.

Know all men by these presents, that we, John Lloyd as principal, and Herbert R. Gill of Guernsey county, and city of Cambridge, Ohio, as sure*ties*, are held and firmly bound unto the State of Ohio, in the sum of one thousand ($1000.00) dollars to be paid to the said State, to which payment, well and truly to be made, we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals this 28th day of March 1903.

Whereas the above named plaintiff in error seeks to prosecute his writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled action by the supreme court of the State of Ohio, now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect and answer all costs and damages that may be adjudged if he shall fail to make good his plea then this obligation to be void, otherwise to remain in full force and effect.

JOHN LLOYD, *Principal.*
HERBERT R. GILL,
—— ——, *Sureties.*

15 STATE OF OHIO, *Guernsey County,* } ss:

John Lloyd and Herbert R. Gill being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of Ohio, and know the contents of the foregoing bond to which we have attached our name. We each for himself say, we are worth the sum of one thousand ($1000.) dollars over and above all debts, liabilities and exemptions.

JOHN LLOYD.
HERBERT R. GILL.

Subscribed and sworn to before me this 28th day of March, 1903.

JAMES JOYCE, [ ]
Notary Public.

The aboveb ond is approved.

JACOB F. BURKET,
Chief Justice of the Supreme Court of the State of Ohio.

16 In the Supreme Court of Ohio, January Term, A. D. 1903.

THE STATE OF OHIO, *City of Columbus,* } ss:

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

STATE OF OHIO on the Relation of JOHN Lloyd, Plaintiff in Error, *vs.* JOSEPH B. DOLLISON, Sheriff of Guernsey County, Defendant in Error.	#8109. Error to the Circuit Court of Guernsey County.

Aug. 2, 1902. Petition in error and waiver of summons filed.
" " " Circuit court transcript filed.
" " " Original papers filed.
" " " Papers taken by F. B. Toothaker for clerk, and returned Sept. 2, 1902.
Sept. 2, " Printed record filed.
" 9, " Proof of service of printed record filed.
Dec. 10, " Plaintiff's printed brief and proof of service filed.
" 29, " Motion by plaintiff to advance and notice filed.
Jan. 13, 1903. Journal entry:

"Motion by plaintiff to advance cause No. 8109 on the general docket."

"Ordered by the court that said motion be and the same is hereby allowed and cause advanced."

Journal No. 19, page 3.

Feb'y 24, 1903. Defendant's printed brief and proof of service filed.

Mar. 24, " Journal entry:

"This cause came on to be heard upon the transcript of the record of the circuit court of Guernsey county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

It is further ordered that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—.

Ordered, that a special mandate be sent the circuit court of Guernsey county, to carry this judgment into execution."

Journal No. 19, page 111.

17

Mar. 24, 1903. Journal entry:

"On motion of said plaintiff in error, this court orders it to be certified and made part of the record in this case and of the judgment an- entry of affirmance heretofore rendered and made herein, that in rendition of said judgment of affirmance it became and was material to the case to determine whether a certain act of the General Assembly, passed April 3rd, 1902, known as an "Act to amend section 4364–20 of the Revised Statutes of Ohio, and to supplement said section by enacting supplementary sections 4364–20*a*, 4364–20*b*, 4364–20*c*, 4364–20*d*, 4364–20*e*, 4364–20*f*, 4364–20*g*, 4364–20*h*, and 4364–20*i*," (95 O. L., 87–91) was of binding force and validity against the said plaintiff in error, and the court order it to be further certified that said plaintiff in error claimed and asked this court to hold that said act of the General Assembly of the State of Ohio is repugnant to the Constitution of the United States and in particular to section 1 of the fourteenth amendment thereto.

This court further order it to be certified that this court is the highest court of law and equity in which a decision of this case can be had in said State of Ohio."

Journal No. 19, page 112.

Mar. 31, 1903. Mandate issued.

" " " Copy of entry of certification sent clerk of courts of Guernsey county.

" " " Petition for writ of error and assignment of errors allowed.

" " " Bond in duplicate allowed and filed.
" " " Writ of error allowed.
Apr. 7, " Citation issued and service od same waived by defendant in error's attorney.

18 Supreme Court of the State of Ohio.

STATE OF OHIO, }
City of Columbus. }

I, Lawson E. Emerson, clerk of the supreme court of Ohio, do hereby certify that the foregoing transcript of docket and journal entries in the case of State of Ohio on the relation of John Lloyd against Joseph B. Dollison, sheriff of Guernsey county, Ohio, is truly taken and correctly copied from the records of said court, to-wit; from Minute Boook No. 22, page 368, and Journal No. 19, pp. 3, 111 and 112; that the foregoing bond is a true and correct copy of the original bond filed in said cause in this court, and that the foregoing petition for writ of error, assignment of errors, writ of error, citation and waiver of service thereon are the original copies herein. And I hereby further certify that the copy of the printed record attached hereto is a true and correct filed and used in said supreme court in the consideration of said cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 10th day of April, A. D., 1903.

[Seal the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio.

19 Filed Sep. 2, 1902, in Supreme Court of Ohio. L. E. Emerson, Clerk.

Supreme Court of Ohio.

STATE OF OHIO on the Relation of JOHN LLOYD, Plaintiff in Error,
vs.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio, Defendant in Error. } No. 8109.

Error to circuit court of Guernsey county, Ohio.

Record.

R. M. Nevin, James Joyce, F. S. Monnett, attorneys for plaintiff in error.

W. B. Wheeler, attorney for defendant in error.

20 In the Supreme Court of Ohio.

STATE OF OHIO on the Relation of JOHN LLOYD, Plaintiff in Error,
vs.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio, Defendant in Error.
} No. 8109.

Petition in Error.

(Filed August 2, 1902.)

The plaintiff in error says that at chambers on the twenty-second day of July, 1902, the Hon. John M. Cook, one of the judges of the circuit court of Guernsey county, Ohio, seventh district, rendered a judgment against the plaintiff in error, in an action then pending, before him therein, wherein The State of Ohio on relation of John Lloyd was plaintiff, and the said Joseph B. Dollison, as sheriff of Guernsey county, Ohio, was defendant, a transcript of the docket and journal entries thereof with the original pleadings is filed herewith.

21 Plaintiff in error prosecutes error in this proceeding under and by virtue of the sections 5751 and 6710, Revised Statutes of Ohio.

There is error in the said record and proceedings in this, to wit:

1. That said court erred in overruling the demurrer of the plaintiff to the answer of the said defendant.
2. That said judgment was given for the defendant in error when it should have been for the plaintiff in error.
3. Said findings and judgments are contrary to law.
4. The court erred in its findings and conclusions of law.
5. Plaintiff in error therefore prays that the said judgment of the circuit court may be reversed, and that the plaintiff in error may be restored to all things he has lost by reason thereof, and for all proper relief.

R. M. NEVIN,
JAMES JOYCE,
F. S. MONNETT,
Attorneys for Plaintiff in Error.

Waiver of Service.

Defendant in error hereby voluntarily enters his appearance herein and waives any other or different service herein.

W. B. WHEELER,
Attorney for Defendant in Error.

Defendant in error hereby acknowledges service of notice of motion to advance said cause on the docket of the supreme court, and the request for oral argument, and hereby consents to such advancement and joins in the request for oral argument.

W. B. WHEELER,
Attorney for Defendant in Error.

22 In the Circuit Court of Guernsey County, Ohio.

JOHN LLOYD
vs.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio.

Transcript of Appearance Docket Entries.

Application for writ of *habeas corpus.*

1902, July 15.—Petition filed. Transcript filed July 15, 1902.
1902, July 15.—Return and answer of defendant filed.
1902, July 15.—Writ of *habeas corpus* issued to the sheriff of Guernsey county, Ohio.
1902, July 15.—Writ of *habeas corpus* returned endorsed as follows:

Received this writ July 15, 1902, and in obedience to the command thereof having in my custody and under restraint the said John Lloyd, I have his body before you: the said John M. Cook, judge of said circuit court of Guernsey county, being by me imprisoned and restrained under process issued by T. J. Calvert, a justice of the peace, on a charge of unlawfully selling intoxicating liquors.

J. B. DOLLISON,
Sheriff of Guernsey County, Ohio.

At chambers, July 15, 1902.—Jour. 1-242: Bond fixed for appearance from day to day before circuit court at $300.
23 1902, July.—Bond approved and filed.
1902, July 23.—Opinion of John M. Cook, circuit judge, Guernsey county, seventh judicial circuit filed. See Jour. 1-242.
1902, July 15.—Demurrer filed.
John Lloyd *vs.* Joseph B. Dollison, sheriff of Guernsey county, Ohio.
At chambers, July 15, 1902, page 242, Jour. 1, *was* made the following entries: This day the bond of John Lloyd is fixed at $300 for his appearance from day to day before the circuit court of Guernsey county, Ohio.

JOHN M. COOK, *Judge.*

At chambers, July 22, A. D. 1902, Jour. 1 and page 242, was made the following entry. This cause came on to be heard before me

upon the pleadings and evidence, all parties being before me, and upon due consideration find that the plaintiff is not unlawfully detained or unlawfully restrained of his liberty, and he is therefore remanded to the custody of said defendant, Joseph B. Dollison, sheriff of Guernsey county, Ohio. To which said plaintiff, John Lloyd, excepts and statutory time is allowed, to prepare, have allowed and file a bill of exceptions.

JOHN M. COOK,
Circuit Judge of Guernsey County, Ohio, Seventh Circuit.

(Certificate attached.)

24 *Petition.*

(Filed July 15, 1902.)

Before John M. Cook, one of the circuit judges of the circuit court of Guernsey county, of the State of Ohio.

THE STATE OF OHIO on Relation of JOHN LLOYD, Plaintiff,
vs.
JOSEPH B. DOLLISON, as Sheriff of Guernsey County, Ohio, Defendant.

Your petitioner, John Lloyd, respectfully represents and states that on the eighth day of July, 1902, he was arrested by M. E. Gallup, who is a constable of the township of Cambridge, county of Guernsey, State of Ohio, upon a certain warrant of arrest issued to the said M. E. Gallup as such constable by the justice of the peace in and for the township of Center, said Guernsey county, Ohio, which township is without the geographical boundaries of said city of Cambridge referred to in said affidavit, and in an action wherein the said State of Ohio was plaintiff, and your petitioner was defendant. That by virtue of said order of arrest, your petitioner was committed to jail in the county of said Guernsey, and is now restrained of his liberty and held so imprisoned in the said jail by Joseph B. Dollison, the duly elected and qualified sheriff of said county, into whose custody the said constable, by virtue of a mittimus, a copy of which mittimus, affidavit and warrant and a transcript of the proceedings are hereto attached, under mark of Exhibit "A." That the pretended cause of restraint and imprisonment is no other than that herein given, a copy of which warrant and proceedings *are* set forth in said exhibit. That the allegations set forth in said
25 affidavit and complaint, upon which said order of arrest was issued, and all the proceedings had by said justice of the peace in and for said county, are void and of no effect, and said justice of the peace was wholly without jurisdiction for the following reasons, to-wit:

That the act of the General Assembly of the State of Ohio, passed

April 3, 1902, purporting to amend and supplement sections 4364–20 by sections 4364–20*a*, 4364–20*b*, 4364–20*c*, 4364–20*d*, 4364–20*e*, 4364–20*f*, 4364–20*g*, 4364–20*h*, and 4364–20*i*, and commonly known as the Beal municipal local option law, is wholly in contravention of the constitution of the State of Ohio, and especially of the provisions of article 2, section 26, for the reason the criminal provisions of said act are of a general nature and do not, and cannot have a uniform operation throughout the State; that said law as so pretended to be amended and enacted has no force or effect in the township wherein said justice of the peace holds his said office, the same being without the boundary of the said city of Cambridge; that the provisions of said law expressly prevent the same from ever taking effect or being in force in the said county of Guernsey, except within the geographical and territorial limits of the cities and villages of the said county, which said territorial limit is less than 1–50 part of the entire territory of said county of Guernsey; said act is void for the further reason that it cannot have any uniform operation throughout the territorial boundaries of said State, outside of the territorial boundaries of the villages and cities of said State;

said act is further void and of no effect for the reason
26 that the General Assembly delegated to the electors of the city of Cambridge, the power and authority to determine whether the said act should take effect upon the approval of their vote, and not otherwise, wholly in contravention of the second paragraph of said article 2, section 26. Said pretended law contravenes article 1, section 1 of the bill of rights of the said constitution; and article 1, section 2 of said bill of rights; it violates article 13, section 1 of the said constitution, in giving special corporate powers by the said special act, the basis of said affidavit.

It violates section 6, article 13 of the constitution; it violates article 2, section 1 of the constitution, which provides that the legislative power of this State shall be vested in the General Assembly, which shall consist of a senate and house of representatives, in this, that by the provisions of section 4364–20*b* it delegates to the judiciary the power of defining what is a "retail dealer," and what constitutes "wholesale quantities" of intoxicating liquors, without defining said term as a part of the act of the legislature. It contravenes section 1, article 14, of the Constitution of the United States, in that it denies to this defendant and other persons within its jurisdiction the equal protection of the law; it deprives said defendant and other citizens of their liberty and property without due process of law; it contravenes article 5 of the Constitution of the United States; it contravenes article 6 of the Constitution of the United States in

that the accused cannot enjoy the right to a speedy and pub-
27 lic trial by an impartial jury of the State, and district wherein the crime is and shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation in this, to wit, that said jury cannot be selected by any previously enacted law from the territorial district, to wit, of the city of Cambridge, which district and

within which district alone said crime, if any, is, was and could have been committed.

That the provisions for the jury under the general statute of the State of Ohio, for a felony or misdemeanor against the State law must be selected from the whole county or district wherein the crime was committed, and said crime is not and cannot be committed, and it is no crime within said district, save and except the aforesaid limited territory within the municipal boundary of the city of Cambridge. It violates section 10, article 1 of the constitution of the State of Ohio.

Wherefore, your petitioner asks that a writ of *habeas corpus* be granted and that he be discharged from such unlawful restraint and imprisonment, and for all proper relief.

R. M. NEVIN,
JAMES JOYCE, AND
F. S. MONNETT,
Attorneys for Plaintiff.

(Duly verified.)

"A."

THE STATE OF OHIO, } ss:
Guernsey County, }

To the keeper of the jail of the county aforesaid, Greeting:

28 Whereas, John Lloyd, late of the county aforesaid, has been arrested on the oath of E. L. Scott for the offense as charged in the following affidavit, to wit:

Before T. J. Calvert, justice of the peace in and for Center township, Guernsey county, Ohio.

STATE OF OHIO, Plaintiff, }
vs.
JOHN LLOYD, Defendant. }

Affidavit.

STATE OF OHIO, } ss:
Guernsey County, }

Before me, T. J. Calvert, a justice of the peace in and for Center township and said county, personally came E. L. Scott, who being duly sworn according to law, deposes and says: That on or about the seventh day of July, 1902, at the county of Guernsey, in the corporate limits of the city of Cambridge, said county, one John Lloyd did then and there unlawfully sell and furnish intoxicating liquors to one E. L. Scott, resident of the city of Cambridge in the quantity of six pints of beer, being an intoxicating liquor to be as a beverage, and then and there keeps a place where such intoxicat

ing liquors are kept for sale, given away and furnished for beverage purposes in violation of the law in such cases made and provided. Affiant further says that more than forty per cent. of the qualified electors of the city of Cambridge, a municipal corporation, prior to the sixth day of May, 1902, duly petitioned the council thereof for the privilege to determine by ballot, whether the sale of intoxicating liquors as a beverage shall be prohibited within the limits of such municipal corporation and that the council of said city duly ordered a special election to be held in not less than twenty nor more than thirty days from the filing of said petition with
29 the mayor of said city, and that said petition was filed as a public document of the municipality, and is then and there duly preserved for reference and inspection. And that an election was duly held at the usual places of holding municipal elections in said city; that due notice had been given of said election and said election had been duly conducted in all respects as provided by law for election of members of the council of said corporation; that the result of said election was forthwith duly entered upon the record of the proceedings of the council of the corporation by the clerk thereof; that the record duly shows that a majority of the votes cast at said election was against the sale of intoxicating liquors as a beverage; that said election was duly held in accordance with said notice on the sixth day of May, 1902; that by virtue of said election the said act passed April 3, 1902, by the General Assembly of the State of Ohio, commonly known as the Beal municipal local "option law," went into force and took effect in said municipality and in no other city, village or township in the said county of Guernsey. Affiant further says that on the twenty-ninth day of May, 1902, in the village of Pleasant City, said county, a similar election was held, and the said question of permitting the sale of intoxicating liquors as a beverage failed to show a majority of the votes cast at said election against the sale of intoxicating liquors as a beverage, and that said Beal municipal local option law did not take effect or go into operation in said village, then and there and thereafter.

Affiant further says that the sale as aforesaid of intoxicating liquors was not made by the said John Lloyd at retail as a
30 regular druggist for exclusively known medicinal, pharmaceutical, scientific, mechanical or sacramental purposes; neither was the same sold upon the written prescription issued, signed and dated in good faith or in any manner whatsoever by a reputable physician in active practice, or by any physician whatsoever. And that said John Lloyd not being then and there a manufacturer of intoxicating liquors from the raw material, and said quantities so sold and not being sold, delivered and furnished as his product as such manufacturer in wholesale quantities to a *bona fide* retail dealer trafficking in intoxicating liquors in said city of Cambridge, Ohio, but wholly and directly in violation of said Beal municipal local option law so passed by said General Assembly of the State of Ohio, April 3, 1902.

(Signed) E. L. SCOTT.

3—262

Sworn to before me by the said E. L. Scott and by him subscribed in my presence this eighth day of July, A. D. 1902.

T. J. CALVERT,
J. P. in and for said Center Township, Guernsey County, Ohio.

And said John Lloyd has been examined by me, T. J. Calvert, one of the justices of the peace in and for said county, on such charge and has been required to give bail in the sum of three hundred dollars, for his appearance before the court of common pleas of said county forthwith, which requisition he has failed to comply with.

Therefore, in the name of the State of Ohio, I command you to receive the said John Lloyd into your custody in the jail of
31 the county aforesaid, there to remain until he be discharged by due course of law.

Given under my hand, this eighth day of July, A. D. 1902.

T. J. CALVERT,
Justice of the Peace.

July 8, 1902.—I committed the within named John Lloyd to the custody of the within named jailor, with whom I left a certified copy of this writ.

M. E. GALLUP, *Constable.*

State Warrant.

THE STATE OF OHIO, } ss:
Guernsey County, }

To any constable of said county, Greeting:

Whereas, complaint has been made before me, one of the justices of the peace for said county, upon the oath of E. L. Scott, that on or about the seventh day of July, 1902, at the county of Guernsey in the State of Ohio, one John Lloyd did on or about the seventh day of July, in the year 1902, at the county of Guernsey, in the corporate limits of the city of Cambridge, said county, one John Lloyd did then and there unlawfully sell and furnish intoxicating liquors to one E. L. Scott, resident of the city of Cambridge in the quantity of six pints of beer, being an intoxicating liquor to be used as a beverage, and then and there keeps a place where such intoxicating liquors are kept for sale, given away and furnished for beverage purposes in violation of the law in such cases made and provided. Affiant further says that more than forty per cent. of the qualified electors of said city of Cambridge, a municipal corporation, prior to the sixth day of May, 1902, duly petitioned
32 the council thereof for the privilege to determine by ballot, whether the sale of intoxicating liquors as a beverage shall be prohibited within the limits of such municipal corporation, and that the council of said city duly ordered a special

election to be held in not less than twenty nor more than thirty days from the filing of said petition with the mayor of said city, and that said petition was filed as a public document with the clerk of the municipality, and is then and there duly preserved for reference and inspection. And that an election was duly held at the usual places of holding municipal elections in said city; that due notice had been given of said election and said election had been duly conducted in all respects as provided by law for election of members of the council of said corporation; that the result of said election was forthwith duly entered upon the record of the proceedings of the council of the corporation by the clerk thereof; that the record duly shows that a majority of the votes cast at said election was against the sale of intoxicating liquors as a beverage; that said election was duly held in accordance with said notice on the sixth day of May, 1902; that by virtue of said election the said act passed April 3, 1902, by the General Assembly of the State of Ohio, commonly known as the Beal municipal local "option law," went into force and took effect in said municipality, and in no other city, village or township in the said county of Guernsey. Affiant further says that on the twenty-ninth day of May, 1902, in the village of Pleasant City, said county, a similar election was held, and the said question of permitting the sale of intoxicating liquors as a bev-
33 erage failed to show a majority of the votes cast at said election against the sale of intoxicating liquors as a beverage. and that said Beal municipal local option law did not take effect or go into operation in said village, then and there and thereafter. Affiant further says that the sale as aforesaid of intoxicating liquors was not made by the said John Lloyd at retail as a regular druggist for exclusively known medicinal, pharmaceutical, scientific, mechanical or sacramental purposes; neither was the same sold upon a written prescription issued, signed and dated in good faith or in any manner whatsoever by a reputable physician in active practice, or by any physician whatsoever. And that said John Lloyd not being then and there a manufacturer of intoxicating liquors from the raw material, and said quantity so sold not being sold, delivered and furnished as his product as such manufacturer in wholesale quantities to a *bona fide* retail dealer, trafficking in intoxicating liquor in said city of Cambridge, Ohio, but wholly and directly in violation of said Beal municipal local option law so passed by said General Assembly of the State of Ohio, April 3, 1902.

These are therefore to command you to take the said John Lloyd if he be found in your county; or if he has fled, that you pursue after him into any other county in the State, and take and safely keep the said John Lloyd so that you have his body forthwith before me, or some other magistrate of said county, to answer the said complaint, and be further dealt with according to law.

Given under my hand, this eighth day of May, A. D., 1902.

T. J. CALVERT,
Justice of the Peace.

34 *Return of Mittimus.*

July 8, 1902.—I committed the within named John Lloyd to the custody of the within named jailor with whom I left a certified copy of this writ.

M. E. GALLUP, *Constable.*

Return.

I took the body of the within named John Lloyd and have him before the justice this eighth day of July, A. D. 1902.

M. E. GALLUP, *Constable.*

Return and Answer of Defendant, Joseph B. Dollison, as Sheriff of Guernsey County, O.

(Filed July 15, 1902.)

This defendant, Joseph B. Dollison, as sheriff of Guernsey county, Ohio, producing the body of John Lloyd in obedience to the writ of *habeas corpus* herein before issued says, that he is the duly elected and qualified sheriff of Guernsey county, Ohio; that on the eighth day of July, A. D. 1902, the said John Lloyd was committed to the jail of said Guernsey county, Ohio, on a mittimus, a copy of said mittimus is to said petition attached issued from the court of T. J. Calvert, a justice of the peace in and for Center township, Guernsey county, Ohio, said John Lloyd being charged before said justice of the peace, with selling intoxicating liquors as a beverage on the seventh day of July, A. D. 1902, in the city of Cambridge, Guernsey county, Ohio, contrary to the provisions of an act passed by the General Assembly of said State of Ohio, April 3, A. D.
35 1902, said act being in full force on said seventh day of July, 1902, and said magistrate requiring said John Lloyd to enter into a recognizance in the sum of three hundred dollars for his appearance forthwith before the common pleas court of Guernsey county, Ohio, the said John Lloyd failing to give such recognizance was committed to the jail of said Guernsey county, Ohio, by said magistrate as aforesaid, that this defendant is entitled to the care and custody of the said John Lloyd.

Defendant denies that the said John Lloyd is unlawfully restrained of his liberty, and therefore prays that this court will order the said John Lloyd to be remanded to his care, custody and control, and that the said writ herein issued may be quashed and that the petition herein may be dismissed, and the costs of this proceed-

ing adjudged against the petitioner, and for such further relief as is proper.

J. B. DOLLISON,
As Sheriff of Guernsey County, Ohio,
By his attorneys, A. L. STEVENS AND
W. B. WHEELER.

Special Demurrer.

(Filed July 15, 1902.)

Plaintiff demurs to the answer herein for the reason that the said answer does not constitute a defense to said petition herein, for the reason said act is unconstitutional.

R. M. NEVINS,
JAMES JOYCE,
F. S. MONNETT,
Attorneys for Plaintiff.

36 *Writ of Habeas Corpus.*

(Filed July 15, 1902.)

THE STATE OF OHIO:

Circuit Court of Guernsey County.

To the sheriff of Guernsey county, Greeting:

We command you that the body of John Lloyd of Guernsey county by you imprisoned and restrained of his liberty, as it is said, you have before me, John M. Cook, a judge of our circuit court, on the fifteenth day of July, A. D. 1902, at 2 o'clock p. m., at the court house in said county, to do and receive what said judge shall then and there consider, concerning him in his behalf; and that with this writ you then and there return the cause of the taking and detention of the said John Lloyd; and have you then and there this writ with your service thereon.

Witness my signature and the seal of said court at ——, Ohio, this fifteenth day of July, 1902.

JOHN M. COOK,
Judge said Circuit Court, Seventh Circuit of Ohio.

Sheriff's Return.

THE STATE OF OHIO, } ss:
Guernsey County, }

Received this writ July 15, 1902, and in obedience to the command thereof, having in my custody and under restraint the said John Lloyd, I have his body before you; the said John M. Cook, judge of said circuit court of Guernsey county, being by me imprisoned and restrained under process issued by T. J. Calvert, a justice of the peace, on a charge of unlawfully selling intoxicating liquors.

J. B. DOLLISON,
Sheriff of Guernsey County, Ohio.

37 This cause came on to be heard before me upon the pleadings and evidence, all parties being before me, and upon due consideration I find that the applicant is not unlawfully detained by the respondent or unlawfully restrained of his liberty, and he is therefore remanded to the custody of said respondent, Joseph B. Dollison, sheriff of Guernsey county, Ohio. To which said applicant, John Lloyd, excepts, and statutory time is allowed to prepare, have allowed and file a bill of exceptions.

JOHN M. COOK,
Judge of Circuit Court, Guernsey County, Ohio, Seventh Circuit.

July 22, 1902.

Order at Chambers.

(Filed July 15, 1902.)

JOHN LLOYD, Plaintiff,
v.
JOSEPH B. DOLLISON, Sheriff of Guernsey County, Ohio, Defendant. } In *Habeas Corpus*

A writ of *habeas corpus* is allowed to issue in this case as prayed for in the application returnable on the fifteenth day of July, 1902, at 2 o'clock p. m.

JOHN M. COOK,
Judge of Circuit Court, Guernsey County, Ohio.

July 15, 1902.

Order at Chambers.

(Filed July 23, 1902.)

JOHN LLOYD, Plaintiff,
v.
JOSEPH B. DOLLISON, as Sheriff of Guernsey County, Ohio, Defendant. } In *Habeas Corpus.*

Decision.

38 This cause came on to be heard before me upon the pleadings and evidence, all parties being before me, and upon due consideration I find that the plaintiff is not unlawfully detained or unlawfully restrained of his liberty, and he is therefore remanded to the custody of said defendant, Joseph B. Dollison, sheriff of Guernsey county, Ohio. To which said plaintiff, John Lloyd, excepts, and statutory time is allowed to prepare, have allowed and file a bill of exceptions.

JOHN M. COOK,
Circuit Judge of Guernsey County, Ohio, Seventh Circuit.

July 22, 1902.

39 [Endorsed :] Supreme court of Ohio. State of Ohio *ex rel.*, John Lloyd, *vs.* Joseph B. Dollison, sheriff of Guernsey county, Ohio. Transcript of record.

Endorsed on cover: File No. 18896. Ohio supreme court. Term No. 262. The State of Ohio on the relation of John Lloyd, plaintiff in error, *vs.* Joseph B. Dollison, sheriff of Guernsey county, Ohio. Filed April 16, 1903. File No. 18896.